

ORIGINAL

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

RW

JAMES ANDRE BENTON,

Plaintiff,

vs.

CIVIL ACTION NO.: CV605-090

Warden GLENN RICH; Deputy Warden
R. D. COLLINS; Sergeant POTTER;
Sergeant HOBBY, and Officer OSBORN.

Defendants.

ORDER

After an independent review of the record, the Court concurs with the Magistrate Judge's Report and Recommendation, to which Objections and a Motion to Extend Time for Discovery and Response to Motion for Summary Judgment have been filed. Plaintiff seeks to stay the proceedings until thirty (30) days after the United States District Court for the Northern District of Georgia enters its decision in the case of Graham v. Rich. Plaintiff filed the instant cause of action in this Court. Plaintiff's Motion is **DENIED**.

In his Objections, Plaintiff asserts that he was not required to exhaust administrative remedies because the grievance procedure was not practically available to him. As noted by the Magistrate Judge, Plaintiff's assertion in this regard overlooks the fact that he filed a grievance concerning an alleged use of excessive force incident and filed the instant cause of action twelve (12) days later. The remaining portions of Plaintiff's Objections speak to the merits of his case. Plaintiff is procedurally barred from bringing his claims at this time, and thus, the Court will not entertain the merits of Plaintiff's Complaint.

The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Plaintiff's claims against Defendants Sergeant Hobby, R. D. Collins, Glenn Rich, and Officer Osborn are **DISMISSED**, without prejudice, due to Plaintiff's failure to exhaust his available administrative remedies prior to filing his Complaint. Plaintiff's claims against Sergeant Potter remain pending at this time.

SO ORDERED, this 22 day of June, 2006.


B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA